IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16/07/2004

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THE HONOURABLE MR. JUSTICE P.K. MISRA

WRIT PETITION NO.693 OF 2000
and
WMP.No.1025 OF 2000

N. Natarajan .. Petitioner

-Vs-

1. State Bank of India,
rep. by its Chairman,
State Bank Bhavan
Madame Cama Road,
Mumbai 400 02.

2. The Chief General Manager,
State Bank of India,
Madras Local Head Office,
Circle Top House,
Rajaji Salai,
Chennai 600 001. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus as stated therein.

For Petitioner : Mr.S. Viswanathan

For Respondents : Mr.P. Sukumar

:O R D E R

Petitioner, a retired Bank employee, has filed this writ petition for issuing writ of mandamus to the respondents directing them to pay pension to him with effect from 1.8.1992 and further to extend the benefit of the scheme for Medical Benefit to Retired Employees to the petitioner and his spouse.

2. Petitioner in the writ petition claims that he was appointed as a Messenger under the respondent Bank on 1.5.1952 and was in continuous service in Tiruppur Branch of State Bank of India for a period of 1 7 years and thereafter he was on sick leave on loss of pay from 1.3.1 969 to 28.2.1970 and resumed duty on 1.3.1970. It is claimed that the petitioner was being treated as in temporary service. Subsequently, the Branch Manager took an application

from the petitioner on 6.8.1 970 for permanent appointment and thereafter appointment order dated 5.11.1970 was handed over to the petitioner. The petitioner however claimed that there was never any break in service. Subsequently, the petitioner was promoted as Bill Collector and ultimately he retired on 31.7.1992. The petitioner claimed that as per Rule 22(i)(a) of the S.B.I. Pension Fund Rules, a member is entitled to pension after completion of 20 years of pensionable service and though the petitioner had made several representations claiming pension, there was no response from the bank. It is further alleged that medical benefits scheme was effective from 1.7.1996 as per which the retired employees and their spouses are entitled to finance assistance for medical treatment. However, a condition is incorporated in the said scheme that the retired employee who desires to avail such benefit should make an one time contribution of a month□s gross pension before 31.12.1996. The petitioner claims that as he was not granted any pension, he was not able to join in the said scheme. It is claimed that for no fault of the petitioner, though he had served the bank for 40 years, he was deprived of the pensionary benefits and also the subsequent medical benefits under the Medical Benefit Scheme. Ultimately after much correspondence a reply was given to the petitioner that by the time of the petitioner□s entry into bank service, he had already crossed the age of 38 years and as such he was not eligible for pension. The petitioner claims that the continuous period prior to 5.11.1970, during which the petitioner had also served the bank, should be counted towards pensionary service. The petitioner claims that the bank authorities had illegally excluded the period of service rendered by the petitioner under the bank from 1.5.1952 to 28.2.1969 and again from 1.3.19 70 to 4.11.1970. It is also claimed that subsequently the Pension Rules have been amended to relax the Pension Fund Rules whereunder the employees of the bank who had retired on or after 1.11.1993 having a minimum period of service of 10 years were made eligible for pension. It is claimed that the benefit of such Rule also should be extended to the petitioner and the exclusion of the employees who had retired prior to 1.11.1993 is discriminatory and violative of the principles of equality envisaged under Articles 14 and 16 of the Constitution of India. Similarly, the Medical Benefit Scheme made applicable to persons who retire after 1.7.1996 is also discriminatory. On the aforesaid premises,the petitioner has claimed the reliefs as indicated earlier.

3. A counter affidavit has been filed on behalf of the respondents. In the said counter the allegation of the petitioner that he had continuously worked from 1.5.1952 to 28.2.1969 has been denied. It is contended that the petitioner was appointed only as per the appointment order dated 5.11.1970 and subsequently was confirmed in 1971. By the time of his regular entry into service the petitioner had already completed the age of 38 years and as such, as per the relevant Rules then applicable, he was not eligible to the benefit under the Pension Fund Rules and in view of such ineligibility, the petitioner was paid Provident Fund amount which was payable only to the persons not eligible to receive pension. It is further contended that under the amended S.B.I. Pension Rules of 1997 the employees who had retired from 1.11.1993 were the beneficiaries and since the petitioner had retired prior to 1.11.1993, he was not eligible. It is similarly contended that the benefit of the Medical Benefit Scheme introduced in 1996 is also applicable only to the employees retired after such date and the petitioner is not eligible to the

benefits under the same.

4. The present writ petition had been tagged along with W.P.No.6691 of 1996 and was in fact heard on some days along with the said writ petition. Similar contentions raised in the said writ petition have been negatived by judgment dated 14.8.2003. In the aforesaid decision reliance was placed upon the decision of the Supreme Court reported in JT 1998 (7) SC 147 (V. KASTURI v. MANAGING DIRECTOR, STATE BANK OF INDIA, BOMBAY AND ANOTHER), wherein the Supreme Court after considering different decisions, observed in paragraph 29 as follows:

 Category II:

29. However, if an employee at the time of his retirement is not eligible for earning pension and stands outside the class of pensioners, if subsequently by amendment of relevant pension Rules any beneficial umbrella of pension scheme is extended to cover a new class of pensioners and when such a subsequent scheme comes into force the erstwhile non-pensioner might have survived, then only if such extension of pension scheme to erstwhile non-pensioners is expressly made retrospective by the authorities promulgating such scheme; the erstwhile non-pensioner who has retired prior to the advent of such extended pension scheme can claim benefit of such a new extended pension scheme. If such new scheme is prospective only, old retirees non-pensioners cannot get the benefit of such a scheme even if they survive such new scheme. They will remain outside its sweep. The decisions of this Court covering such second category of cases are : Commander, Head Quarter, Calcutta & Others V. Capt. Biplabendra Chanda, JT 1996 (Suppl) SC 242 (supra) and Government of Tamil Nadu & Another V. K. Jayaraman, JT 1997(2) SC 526 (supra) and others to which we have made a reference earlier. If the claimant for pension benefits satisfactorily brings his case within the first category of cases he would be entitled to get the additional benefits of pension computation even if he might have retired prior to enforcement of such additional beneficial provisions. But if on the other hand the case of a retired employee falls in the second category, the fact that he retired prior to the relevant date of coming into operation of the new scheme, would disentitle him from getting such a new benefit.

5. The ratio of the aforesaid decision of the Supreme Court is squarely applicable to the present case and the benefit of the amendment effected in 1997 cannot be extended to the petitioner.

6. The petitioner has also contended that he was in service even prior to 1970 and as such he was eligible to get pension as at the time of his initial entry into service he was within the age limit prescribed under the Pension Rules. The respondents in their counter have categorically denied about the appointment of the petitioner prior to 5.11.1970. As a matter of fact, even though the petitioner had been engaged as Messenger on casual basis off and on, it is evident that he entered into service in a substantive capacity only as per the order of appointment dated 5.11.1970. By the said date, the petitioner was admittedly above 38. At the relevant time, as per the Pension Rules, a person who had not completed the age of 38 at the time of entry into service was eligible to receive pension on completion of 20 years service or more. Even though the petitioner has completed 20 years of

service, he had crossed the age limit prescribed under the Rules. After the petitioner was substantively appointed and till his retirement, the petitioner had never complained about nonconsideration of past period of service rendered by him. It is obvious that prior to his regular appointment the petitioner was only engaged on casual basis intermittently, and therefore, it cannot be said that at the time of his entry into service, he was less than 38 years of age in order to be eligible to receive pension on completion of 20 years of service.

7. The petitioner has also contended that the bank in certain other cases has granted pension to many people even though such persons were not eligible. However, the petitioner has not been able to substantiate such contention with reference to any particular instance. Be that as it may, without expressing any opinion on this aspect, I deem it proper to observe that it would be open to the petitioner to file appropriate representation which may be considered on its own merits by the Bank.

8. Subject to the above observation, the writ petition is dismissed. No costs. Consequently, WMP.No.1025 of 2000 is closed.

Index : Yes
Internet : Yes

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To

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2. The Chief General Manager,
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